

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JOHNNY DAVIS,  
  
Defendant.

NO. 2:18-cr-00132-RAJ

ORDER ON DEFENDANT'S MOTION  
FOR COMPASSIONATE RELEASE

This matter comes before the Court on Defendant Johnny Davis's motion for compassionate release. Dkt. 949. Having thoroughly considered the parties' briefing, and the relevant record, the Court finds oral argument unnecessary and hereby **DENIES** the motion for the reasons explained herein.

**I. BACKGROUND**

Mr. Davis is an inmate currently detained at Federal Correctional Institution Florence, with a projected release date of December 9, 2025. On July 3, 2019, he entered a plea of guilty to one count of Conspiracy to Distribute Controlled Substances, a lesser-included offense of the offense charged in Count 1 of the Superseding Indictment, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(B), and 846. Dkt. 558. On March 6, 2020, this Court sentenced Mr. Davis to 60 months in custody, to be followed by four years of supervised release. Dkt. 743. Due to Mr. Davis's health

1 conditions and the coronavirus-19 (COVID-19) pandemic, the Court granted four  
 2 motions filed by Mr. Davis to extend his self-surrender date to begin serving his sentence.  
 3 Dkts. 795, 835, 873, 911. Mr. Davis began serving his sentence in September 2021. Mr.  
 4 Davis now moves for compassionate release arguing that he presents extraordinary and  
 5 compelling reasons for the Court to convert his remaining custodial time to be served on  
 6 supervised release. Dkt. 949.

## 7 **II. DISCUSSION**

### 8 **A. Legal Standard for Compassionate Release**

9  
 10 A federal court generally “may not modify a term of imprisonment once it has  
 11 been imposed. *Dillon v. United States*, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. §  
 12 3582(c).

13 Under 18 U.S.C. § 3582(c)(1)(A), Congress provided an exception allowing a  
 14 court to reduce a term of imprisonment for “extraordinary and compelling reasons.”  
 15 While under the original statute, only the BOP Director could file such a motion, that  
 16 limitation has been revised. As part of the First Step Act of 2018, Congress amended  
 17 § 3582(c)(1)(A) to allow a defendant to seek a reduction from the BOP and that request  
 18 has been denied or 30 days have passed.

19 Congress failed to provide a statutory definition of “extraordinary and compelling  
 20 reasons.” Instead, Congress stated that the Sentencing Commission “in promulgating  
 21 general policy statements regarding the sentencing modification provisions in 18 U.S.C.  
 22 § 3582(c)(1)(A) shall describe what should be considered extraordinary and compelling  
 23 reasons for sentence reduction.” A policy statement was issued and embodied in U.S.S.G.  
 24 § 1B1.13.

25 The Sentencing Commission’s policy statement, in turn, says that a court may  
 26 reduce a term of imprisonment if “the defendant is not a danger to the safety of any other  
 27 person or to the community” and “extraordinary and compelling reasons warrant such a  
 28 reduction.” United States Sentencing Guidelines (“USSG”) § 1B1.13. The policy

1 statement clarifies that such reasons exist when (1) “the defendant is suffering from a  
2 terminal illness” or (2) “the defendant is suffering from a serious physical or mental  
3 condition . . . that substantially diminishes the ability of the defendant to provide self-care  
4 within the environment of a correctional facility and from which he or she is not expected  
5 to recover.” USSG § 1B1.13 cmt. n.1. The policy statement also directs a court to  
6 consider the factors set forth in 18 U.S.C. § 3553(a) in deciding whether compassionate  
7 release is appropriate and what form compassionate release should take. USSC § 1B1.13  
8 cmt. n.4.

9 While the Sentencing Commission did issue a policy statement regarding  
10 “Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A),” *United States v.*  
11 *Aruda*, No. 20-10245, 2021 WL 1307884 (9th Cir., Apr. 8, 2021) has since held the  
12 current version of § 1B1.13 refers only to motions filed by the BOP Director and does not  
13 reference motions filed by a defendant as now allowed under § 3582(c)(1)(A).  
14 Consequently, this Court may consider U.S.S.G. § 1B1.13 in exercising its discretion, but  
15 the policy statement is not binding.

16 In adopting this rationale, the Ninth adopted the reasoning of five other circuits.  
17 In *Aruda, Id.*, the Court specifically referenced the explanation of the Fourth Circuit:

18 “[t]here is as of now no ‘applicable’ policy statement governing  
19 compassionate-release motions filed by defendants under the recently  
20 amended § 3582(c)(1)(A), and as a result, district courts are  
21 ‘empowered...to consider *any* extraordinary and compelling reason for  
22 release that a defendant might raise. ” *United States v. McCoy*, 981 F3d  
23 271, 284 (4th Cir. 2020) (quoting *United States v. Brooker*, 976 F.3d 228,  
24 230 (2nd Cir. 2020).”

25 In light of the foregoing, § 1B1.13 may inform this Court’s discretion for  
26 § 3582(c)(1)(A) motions filed by a defendant, but they are not binding.

27 Mr. Davis’s motion seeks a reduction in sentence under 18 U.S.C. §  
28 3582(c)(1)(A), as amended by the First Step Act of 2018. As amended, § 3582(c)(1)(A)

1 permits an inmate, who satisfies certain statutorily mandated conditions, to file a motion  
2 with the sentencing court for “compassionate release.”

3 **B. Exhaustion of Administrative Remedies**

4 Prior to considering the merits of Mr. Davis’s motion, the Court must determine  
5 whether he has met the statutory exhaustion requirement for compassionate release. *See*  
6 18 U.S.C. § 3582(c)(1)(A). On October 13, 2021, through counsel, Mr. Davis submitted  
7 a formal request for compassionate release to the warden of his facility. On October 20,  
8 2021, Warden Carter denied the request. Dkt. 949, Ex. D. Based on the evidence  
9 presented, the Court finds the statutorily required 30-day period has expired, and Mr.  
10 Davis’s motion is properly before the Court.

11 **C. Extraordinary and Compelling Circumstances.**

12 The Court must next determine if extraordinary and compelling circumstances  
13 warrant a reduction of Mr. Davis’s term of imprisonment. *See* 18 U.S.C.  
14 § 3582(c)(1)(A)(i).

15 To be eligible for this Court to exercise its discretion for a reduced sentence, Mr.  
16 Davis bears the burden to show “extraordinary and compelling reasons” for  
17 compassionate release to be granted.

18 Mr. Davis argues that his constellation of medical conditions places him at high  
19 risk for life-threatening complications or death from COVID-19, which health conditions  
20 he states have increasingly worsened since his incarceration. Specifically, Mr. Davis  
21 indicates he suffers from osteoarthritis, chronic hip and back pain, Graves’ disease,  
22 hyperparathyroidism, obesity, stage 3B kidney disease, high blood pressure, depressive  
23 disorder, substance use disorder, and conjunctivitis in both eyes. Dkt. 949.

24 In support of his motion, Mr. Davis also sets forth claims regarding the conditions  
25 of his confinement at FCI Florence which he argues place him at further risk of  
26 contracting the virus, highlighting the lack of timely COVID testing, failure to isolate  
27  
28

1 symptomatic prisoners and guards, and non-compliance with required masking protocols.  
2 Dkt. 949.

3 While the government acknowledges Mr. Davis suffers from various medical  
4 conditions, including some which may place him at higher risk should he contract  
5 COVID-19, the government indicates that he has been fully vaccinated, including a very  
6 recent third booster vaccination, which substantially decreases his risk, and that his health  
7 conditions are being managed by the Bureau of Prisons. The government argues that  
8 given his vaccination status and the fact the surge in cases due to the Omicron variant is  
9 significantly abating – a variant that in any event is less likely to cause severe illness,  
10 particularly in vaccinated individuals – Mr. Davis is not especially vulnerable to  
11 complications should he contract the virus. The government thus contends Mr. Davis has  
12 not presented “extraordinary and compelling reasons” to justify his release. Dkt. 974.

13 The Court agrees with the government that to a significant degree, Mr. Davis’s  
14 receipt of the vaccination moots most if not all of his arguments about his vulnerability to  
15 COVID-19 and the Omicron variant. While no vaccination is 100% effective, it  
16 substantially reduces the likelihood of Mr. Davis contracting the virus. While concerns  
17 about contracting the virus are certainly understandable, “[g]eneral concerns about  
18 possible exposure to COVID-19 do not meet the criteria for extraordinary and compelling  
19 reasons for a reduction in sentence.” *See, United States v. Eberhart*, \_\_ F. Supp. 3d \_\_, 2020  
20 WL 1450745 at \*2 (N.D. Cal. 2020); *United States v. Standard*, 2020 WL 221948 (W.D.  
21 WA. May 7, 2020) and *United States v. Fuentes*, 2020 WL 1937398 (E.D. Ca. Apr. 2020).

22 The basis of Mr. Davis’s motion is premised upon whether his special  
23 circumstances warrant compassionate release. During the earlier stages of the pandemic,  
24 the statistics and urgency for relief as requested were certainly more justified. But at this  
25 stage, the mere existence of COVID-19 is a general threat to every non-immune person in  
26 the country. The mere possibility that it may spread to a particular person at any moment  
27 in time does not independently justify compassionate release. *See, United States v. Raia*,  
28 954 F.3d 594, 597 (3rd Cir. 2020).

1 While Mr. Davis has presented evidence of episodic delays in treatment, the Court  
2 is not persuaded that his chronic conditions are not manageable. A defendant's chronic  
3 but manageable underlying medical conditions alone do not constitute "extraordinary and  
4 compelling" circumstances, particularly since he has been vaccinated and received a  
5 recent booster. *United States v. Broadfield*, No. 20-2906, \_F.4<sup>th</sup>\_, 2021 WL 3076863, at  
6 \*2 (7th Cir. July 21, 2021).

7 The government has minimized the strength of Mr. Davis's request for  
8 compassionate release primarily upon its references to the decisions of numerous courts,  
9 including the Western District of Washington, concluding that the vaccine offers such  
10 significant protection that the pandemic is not grounds for a reduction in sentence even  
11 for inmates with medical conditions. The Court will not restate the government's  
12 arguments, nor its referenced citations, but directs the parties to Dkt. 974, pgs. 6-7.

13 The Court has considered Mr. Davis's reference to the list of cases granting early  
14 release due to COVID-19 risks (Dkt. 949 at pgs. 21-22), but those cases were decided  
15 during the peak of the virus and certainly before the availability of effective vaccines. As  
16 acknowledged by Mr. Davis, he essentially received a compassionate reporting date  
17 which occurred after the vaccine became available. The fact that he may face some risk  
18 from COVID-19 and the Omicron variant is not compelling. As observed by the  
19 government, we all run the risk of catching the virus, and Mr. Davis faces that risk even if  
20 he is released into the community.

21 The government does not contest that Mr. Davis suffers from a "laundry list" of  
22 chronic ailments, some serious. Dkt. 974, at 10. But the Court is not convinced that Mr.  
23 Davis cannot care for himself in his place of incarceration or that his medical conditions  
24 are not manageable with the treatment provided by the BOP. The medical records  
25 evidence treatment by medical staff and prescribed medications to treat his conditions.  
26 Recent medical records demonstrate that Mr. Davis has recently been evaluated and  
27 efforts have been engaged to manage his conditions. While the delays in his receipt of  
28 certain diagnostic tests as quickly and frequently as he would desire are validated in the

1 record, there is no evidence that the treatment needs for his various concerns are being  
2 ignored. The Court affirms the government's assertion that if Mr. Davis's conditions  
3 worsen in a significant manner, he is free to file another motion for compassionate  
4 release or seek other relief based upon those facts and circumstances. At this time,  
5 however, the record does not support granting his motion for compassionate release.

#### 6 **D. Safety of Others**

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8 The Court next turns to whether Mr. Davis presents a danger to the safety of any  
9 other person or to the community. As noted above, while not bound by U.S.S.G.  
10 §1B1.13, this Court exercises its discretion and will consider the 18 U.S.C. § 3553(a)  
11 factors in assessing whether a reduction in sentence is appropriate.

12 In making this determination, the Court looks to the nature and circumstances of  
13 the underlying offense, the weight of evidence against him, his history and  
14 characteristics, and the nature and seriousness of the danger his release would pose to any  
15 person or the community. 18 U.S.C. §3142(g). The Court may not reduce a defendant's  
16 sentence unless it finds that "the defendant is not a danger to the safety of any other  
17 person or to the community, as provided in 18 U.S.C. § 3142(g)."

18 Since the Court finds that Mr. Davis has failed to meet his burden of  
19 demonstrating extraordinary and compelling reasons to warrant his release, there is no  
20 reason to address this issue. That being said, there is no evidence that Mr. Davis  
21 currently presents a danger to the safety of any other person or to the community. Had he  
22 created such a concern, the Court would not have been willing to allowed his delayed  
23 reporting to begin commencement of the service of his sentence.

#### 24 **E. Other 18 U.S.C. § 3553(a) Factors**

25 In determining whether to grant Mr. Davis's compassionate release under 18  
26 U.S.C. § 3582(c)(1)(A), the Court also considers the relevant factors other than noted  
27 above as set forth under 18 U.S.C. § 3553(a). These factors include the need for the  
28 sentence imposed, the kinds of sentences available, promoting respect for the law,

1 providing just punishment for the offense, avoiding unwarranted sentencing disparities,  
2 and providing medical care in the most efficient manner. 18 U.S.C. § 3553(a)(2)(B, C,  
3 D); 18 U.S.C. § 3582(c)(1)(A).

4 In support of his request that the Court reweigh the § 3553(a) factors, Mr. Davis  
5 cites his positive performance on supervision both pretrial and during the extended time  
6 prior to his report date, his voluntary treatment for his substance abuse disorder and  
7 depression prior to his self-surrender, and his strong support system and family ties.  
8 Additionally, he argues that release to the community will allow him access to critical  
9 medical care that he is unable to obtain while incarcerated. Dkt. 949.

10 The government counters that a reweighing of the § 3553(a) factors continues to  
11 support the 60-month sentence, highlighting Mr. Davis's decision to decline to provide a  
12 proffer in this matter. This decision made Mr. Davis ineligible for the safety-valve  
13 adjustment and subjected him to a 60-month mandatory minimum sentence. The  
14 government argues that a decision to grant immediate release for Mr. Davis would give  
15 rise to unwarranted sentencing disparities in this large multi-defendant drug conspiracy,  
16 particularly when Mr. Davis made the specific decision to not take advantage of the  
17 opportunity of a safety-valve adjustment. Dkt. 974. The Court agrees.

### 18 III. CONCLUSION

19 For the foregoing reasons, Defendant Johnny Davis's motion for compassionate  
20 release is **DENIED**.

21  
22 DATED this 30th day of March, 2022.

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25 The Honorable Richard A. Jones  
26 United States District Judge  
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